

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report on Investigation into Complaint
Regarding Disclosures of Personal Information**

June 28, 2004

Conseil scolaire catholique et francophone du Sud de l'Alberta

Investigation #2928

I. INTRODUCTION

[1] On February 19, 2004, the Commissioner received a privacy complaint against the Conseil scolaire catholique et francophone du Sud de l'Alberta ("the School District") on the following matters:

- The Complainant said a school ("the School") under the jurisdiction of the School District breached privacy by disclosing information about the Complainant's child on two occasions to other parents and a school bus company. The Complainant questioned whether the disclosures were in accordance with the *Freedom of Information and Protection of Privacy Act* ("the FOIP Act").
- The Complainant claimed the School District disclosed information about the Complainant and the Complainant's family to the Alberta Teachers' Association ("the ATA"). The Complainant believed the disclosure is in contravention of the FOIP Act.

[2] Section 53(2)(e) of the FOIP Act allows the Commissioner to investigate complaints that personal information has been collected, used or disclosed in contravention of Part 2 of the FOIP Act. In response to the complaint, the Commissioner authorized me to investigate this matter. This report outlines the findings and analysis of my investigation.

II. ISSUES

[3] The issues of this investigation are:

1. Did the School District disclose personal information to the other parents and the school bus company in contravention of Part 2 of the FOIP Act?
2. Did the School District disclose personal information to the ATA in contravention of Part 2 of the FOIP Act?

III. COMPLAINT REGARDING DISCLOSURES TO PARENTS AND SCHOOL BUS COMPANY

A. Background Information

[4] The School District says it has a Code of Conduct which includes rules for proper conduct aboard school buses. Any person (e.g. bus driver, parents, school administrators, and students) may report an infraction by completing an "Infraction Form".

[5] The first portion of the Infraction Form is the complaint about the infraction. The second portion of the Infraction Form is used by the school to document the actions taken in investigating the complaint.

[6] Complaints are investigated and could result in a written warning sent to the home of the student involved. After three written warnings, a student may face gradual suspension of school bus transportation services.

B. Information At Issue

[7] The School received an Infraction Form from a parent expressing concerns about the behavior of a student towards the parent's children. The School then met with one of the parent's children regarding this matter. The child commented on the behaviors of several students, including the Complainant's child. The School documented the child's comments on the second portion of the Infraction Form. A note at the bottom of the Infraction Form indicates the School talked to the students named by the child and that these students had received their first warning. The School issued the Infraction Form on a Friday.

[8] On the following Monday, the School used another Infraction Form to issue a note indicating the students had been given a verbal warning following a complaint but that the written warning was not merited as the students had not been the subject of any prior complaints. As a result, the note states the written warning had been withdrawn.

C. Is the Information at issue "personal information"?

[9] Section 1(n) of the FOIP Act defines personal information as "recorded information about an identifiable individual". Personal information can include an individual's name and anyone else's opinions about the individual.

[10] The two Infraction Forms contain the following information: the name of the parent who submitted the first Infraction Form, the names of the parent's children, the name of the Complainant's child, the names of other students, and allegations regarding the students' behaviors. I find the Infraction Forms contain information about the Complainant's child and information about other individuals. Therefore, the information at issue is "personal information" as defined by the FOIP Act.

D. Did the School District disclose personal information in contravention of Part 2 of the FOIP Act?

[11] The School District does not dispute that copies of the Infraction Forms were sent to the parents of the students involved. However, the School District says copies of the Infraction Forms were not sent to the school bus company.

[12] The School District says the intent of the Infraction Form is to report complaints regarding infractions and document the actions taken by a school in response to the complaint. If a written warning is warranted, a separate written warning for each student involved should have been sent to the parents with no mention of the names of the other students involved or the person who filed the complaint. The School District indicated the School made a mistake in its usage of the Infraction Forms.

[13] I agree with the School District's assessment of this matter. I find that the School used the first Infraction Form as a written warning and the second Infraction Form as a follow-up correspondence on this matter.

[14] The Infraction Form has a specific purpose that is separate and different from a written warning or a general correspondence form. By using the Infraction Form for a purpose that it was not designed for, a school may inadvertently place itself at risk of disclosing more information than is necessary or required. Further, it may be confusing to the parents of the students involved – for instance, the Complainant viewed the second Infraction Form as a second warning although the message conveyed was that the warning was not merited and was withdrawn.

[15] As the Infraction Forms contained personal information, I reviewed the disclosure of the Infraction Forms to the parents in accordance with Part 2 of the FOIP Act. In order to fulfill the disclosure provisions of the FOIP Act, the School District must first have authority to disclose personal information under section 40(1). Second, the School District must only disclose what is necessary and reasonable as required under section 40(4).

[16] Section 40(1)(c) of the FOIP Act allows a public body to disclose personal information for the purpose of which the information was collected. I find that the information on the Infraction Forms was collected as part of the complaint process and was disclosed to the parents as part of the complaint process. Therefore, I conclude that the disclosure to the parents was allowed under section 40(1)(c) of the FOIP Act.

[17] The disclosure was limited to the parents of the students involved. However, in my view, the disclosure to the parents was more than necessary or reasonable given the circumstances. There is no indication that the students named by the parent who filed the infraction complaint or the parent's child were acting as a coordinated group. The allegations against the students named appear to be distinct and separate incidents as opposed to a single incident. In this situation, I believe it is necessary and reasonable for each parent to know the information about their child. However, I find that the disclosure of information about the other students was not necessary. Therefore, I find the disclosure did not meet the requirement of section 40(4) of the FOIP Act.

[18] The School District says it has communicated with all its school administrators the intent and purpose of the Infraction Forms and the requirement that a separate written warning be issued to each student involved. I believe the School District has taken reasonable measures to prevent a similar future recurrence of this nature. In my view, no further action is warranted by this Office on this matter.

IV. COMPLAINT REGARDING DISCLOSURE TO THE ALBERTA TEACHERS' ASSOCIATION

A. Background Information

[19] The Complainant was contacted by an ATA representative for information in relation to an investigation regarding the professional conduct of a teacher. The Complainant questioned how the ATA obtained information about the Complainant and the Complainant's family. The Complainant believes the information was disclosed by the School District in contravention of the FOIP Act. In addition, the Complainant questioned the ATA's authority to obtain such information.

[20] The FOIP Act does not apply to the ATA. Consequently, I will not review or comment on the ATA's authority to collect personal information pursuant to the FOIP Act.

[21] However, the School District is an "educational body" as defined under section 1(d) of the FOIP Act and is subject to the FOIP Act. As the School is part of the School District, it is also subject to the FOIP Act. Therefore, I can review whether personal information was disclosed to the ATA and if so, whether the disclosure was in accordance with Part 2 of the FOIP Act.

B. Information at Issue

[22] The Complainant claimed the ATA representative telephoned the Complainant at work, at home and left messages on the Complainant's cell phone number. The Complainant also said the ATA representative knew other information such as the name of the Complainant's spouse.

C. Did the School District disclose personal information to the ATA?

[23] In letters written to the School District and to the Complainant, the ATA representative says the telephone number of the Complainant was obtained through the White Pages of the Telus telephone directory. The ATA representative claims to have called a number of listings under the Complainant's surname until "I had obtained the appropriate individual".

[24] The Complainant's surname is not unusual or unique. There are approximately 70 listings with the same surname as the Complainant in the city and about 18 listings in the rural areas. Given the number of listings and the placement of the Complainant in the listings, I believe it is likely that the ATA representative did have other information (such as the name of the Complainant's spouse, residence or work) to narrow the search for the

Complainant's home telephone number. However, there is no evidence that the School or the School District was the source of this information to the ATA representative.

[25] The Complainant could not provide evidence to substantiate the claim that the ATA representative did indeed contact the Complainant at work or on the Complainant's cell phone. In Order F2002-020, the Commissioner wrote:

[para. 20] "*...there must be a satisfactory level of evidence presented in support of the allegation. If this were not the case, a public body could be put into the untenable position of proving a negative (e.g. that a breach did not occur) based on any allegation raised by a complainant...*"

[26] In the absence of evidence, no further proceedings can be taken with regards to the Complainant's allegations regarding the disclosure of the Complainant's home, work and cell telephone numbers, and information about the Complainant's family.

[27] However, the Complainant provided evidence to substantiate the claim that the Complainant's name was disclosed to the ATA by the School. As the Complainant's name is "personal information", the disclosure of the Complainant's name would be subject to the disclosure provisions set out in the FOIP Act.

D. Is the disclosure in contravention of Part 2 of the FOIP Act?

[28] Section 4(b)(vi) of the *Teaching Profession Act* (the "TPA") grants the ATA the power to discipline members in the discharge of their professional duties and relationships. Under section 24(1) of the TPA, any person may make a complaint to the ATA. Upon receipt of a complaint, the ATA is required to investigate the complaint (section 25, section 26 and section 27 of the TPA).

[29] The Complainant's name was disclosed to the ATA in relation to a complaint of alleged unprofessional conduct. The ATA is authorized under the TPA to receive and investigate these complaints. Therefore, I find the disclosure of the Complainant's name to the ATA was allowed under section 40(1)(f) of the FOIP Act, which states:

40(1) A public body may disclose personal information only

(f) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure

V. CONCLUSION AND CLOSING REMARKS

[30] In summary, I conclude:

1. The School District's disclosure of personal information to the parents was allowed under section 40(1)(c) of the FOIP Act. However, the disclosure was more than was necessary or reasonable given the circumstances. The School District has taken steps to prevent a similar recurrence of this nature.

2. The School District's disclosure of the Complainant's name to the ATA was allowed under section 40(1)(f) of the FOIP Act.

[31] The Complainant has other issues and concerns with the School and School District. However, this Office can only review and comment on those matters that are under the Commissioner's jurisdiction. This investigation has addressed those issues that are relevant to the FOIP Act. As this Office can offer no other practical remedy to the Complainant on this matter, no further action is warranted. This case can now be closed.

Submitted by,

Marylin Mun
Team Leader, FOIP